IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Civil Writ Petition No.1737/2006.
(Dinesh Kumar Vs. State of Rajasthan & Others)

DATE OF ORDER : August 10th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.L. Maheshwari for the petitioner.
Mr. R.S. Saluja for the respondent(s).

BY THE COURT :

The petitioner is holder of one permit out of 40 permits for the route Bhilwara to Beawar, an existing A-Class route, 112 kms in length. The permit is presently valid upto 30.10.2010. The Municipal Board, Beawar, in its meeting held on 14.02.2006 presided by its Commissioner, passed resolution to the effect that a sum of Rs.50/- be charged per trip from each of the buses operating from the Vijainagar Road Bus Stand, Beawar with effect from 01.03.2006. Accordingly, respondent No.3 issued a letter to the District Transport Officer, Bhilwara/Beawar to be informed about the names and addresses of all the permit

holders with necessary detail regarding the operation of their motor vehicles who operate their motor vehicles from the Vijainagar Road Bus Stand so that fee of Rs.50/- per trip may be charged from them with effect from 01.03.2006. Copy of the letter was also addressed to the president of the Vijainagar-Bhilwara Bus Operators Association, Beawar.

Against the said resolution, a delegation of the affected bus operators met the Commissioner, Municipal Board, Beawar and requested that imposition of such tax is illegal and without any law. It was verbally assured to them by the Commissioner that the matter will be re-considered. On 25.03.2006, in order to find out whether the said resolution is withdrawn or not with regard to the so-called fee of Rs.50/- per trip per bus, the representatives of the permit holders contacted respondent No.3 but the reply of the respondent was in the negative and it was informed to them that the said resolution will be brought into effect from 03.04.2006. The petitioner challenges the validity of the aforesaid resolution on the ground that the control of transport vehicles is governed by provisions of the Motor Vehicles Act, 1988 (hereinafter the Act of 1988) and Section 86 (2)(xi) thereof empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter

VI of the Act in respect of all or any of the matters mentioned therein.

The petitioner's contention is that Section 117 of the Act of 1988 provides that the State Government, or any authority authorized in this behalf by the State Government, may, in consultation with the local authority having jurisdiction in the area concerned, determine the places at which motor vehicles may stand either indefinitely or for a specified period and may determine the places at which the public service vehicles may stop for a longer time than is necessary for taking up and setting down passengers.

Referring to the provisions of the Act of 1988, the petitioner submits that clause (e) of sub-section (2) of Section 138 of the Act provides for framing of the rules for the maintenance and management of parking place and stand and the fee, if any, which may be charged for the use. The petitioner contends that the cumulative effect of the provisions of the Act of 1988 makes it manifestly clear that the place for plying of vehicles and terminating the trip shall be a notified bus-stand.

According to the petitioner, under Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951 no toll or tax can be levied by a local authority. Section 21 of the Act of 1951

reads as under :

> "21.No toll or tax to be levied by local bodies.-(1) Notwithstanding anything to the contrary in any law for the time being in force in any part of the State of Rajasthan, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle.
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> (2)Nothing in this section shall affect the power of any local authority to impose, increase or recover any tax falling under entry 52 of list II in the Seventh Schedule to the Constitution."

It is further submitted that sub-section (1) of Section 4 of the Act of 1951 provides that save as otherwise provided by the Act or the Rules made thereunder or any other law for the time being in force, there shall be levied and collected on all motor vehicles used or kept for use in the State -

(a) a tax in respect of such vehicles at such rates as may be specified by the State Government by notification in the official gazette which shall not exceed 10% of the cost of the chassis/vehicle per annum.

The petitioner submits that no such notification has been issued. Under these circumstances, the impugned resolution passed by the Municipal Board, Beawar for imposition of fee of Rs.50/- per trip per bus operating from the Vijainagar Road Bus Stand, Beawar is per se illegal, void and without jurisdiction. The contention of the petitioner is that it is only the Regional

Transport Authority who is empowered to fix the bus stand and to prescribe fee to be paid by the owner of the public service vehicle for using such place. The petitioner contends that the municipality has neither authority nor jurisdiction for charging any such fee or rent or tax in any manner. Under Section 21 of the Act of 1951 there is complete ban with regard to levy of any tax or toll or fee in respect of a motor vehicle which under Section 4 is used in any public place or kept for use in Rajasthan by a local authority. The imposition of fee by the respondent is nothing but a tax or toll in respect of such motor vehicles within the meaning of the Act of 1951 and Section 105 of the Rajasthan Municipalities Act, 1959 prohibits the respondents from imposing any such tax on the motor vehicles.

In support of the aforesaid contentions, learned counsel for the petitioner placed reliance upon number of judgments and prayed that the impugned resolution dated 14.02.2006 passed by the Finance Committee of the Municipal Board, Beawar imposing fee of Rs.50/- per trip per bus may be set aside.

Learned counsel for the petitioner invited my attention towards judgment reported in 1963 R.L.W. 258, Narain Vs. Cantonment Board Nasirabad as well as judgment reported in 1960 RLW 442, Raghuwar Dayal Vs. Municipal Board, Bari and

submitted that the true meaning of Section 21 of the Motor Vehicles Taxation Act, 1951 is that irrespective of any other law or rules authorizing the local authority/body to levy tax, it has been prohibited from levying any tax or toll in respect of motor vehicles and, therefore, the impugned resolution is in direct contravention of Section 21 of the Act of 1951 and deserves to be quashed.

Per contra, by way of filing reply, respondent No.3 put up the stand before the Court that before directing to pay fee of Rs.50/- per trip per bus, called the president of the Vijaynagar and Bhilwara bus operators union vide letter dated 27.02.2006 for meeting but none of the representatives of the union turned up for the meeting. The contention of the respondent as to legitimacy and legality of imposition of the so-called fee of Rs.50/- per trip per bus is that under the provisions of Section 138 of the Rajasthan Municipalities Act, 1959 the respondent is competent to impose such fee for use of the area within its jurisdiction. The respondent further contends that the provisions of the Motor Vehicle Act and Motor Vehicle Taxation Act are not relevant in the present context. It is urged by the respondent in the reply that in case the recovery effected under the provisions of Section 138 of the Act of 1959 is stopped, it will be illegal

deprivation of property to the answering respondent which it is so recovering in consonance with the provisions of Section 138.

From the above, it is clear that the impugned resolution is being sought to be legitimatized by the respondent on the strength of Section 138 of the Rajasthan Municipalities Act, 1959. Section 138 of the Act of 1959 reads as under :

> "**138.Board may charge fee for certain licences.-** (1) When any licence is granted by the board under this Act or when permission is given by it for making any temporary erection or for putting up any projection, or for the temporary occupation of any public street or other land vested in the board, may charge a fee for such licence or permission.
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> (2) The board may charge a higher fee by way of penalty for any erection or projection, or for the use or occupation of any public street or other land vested in the board by any person without its permission or licence. Such fee shall be leviable irrespective of any other penalty or liability to which the person liable to pay the same may be subject under any other provision of this Act or any other law for the time being in force. The rates of such higher fees shall be determined by rules.
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> (3) The board may also charge such fee maybe fixed by bye-laws under clauses (a), (q) and (r) or sub-section (1) of section 90, for the use of any such places, mentioned in that sub-section as belong to the board.
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> (4) It shall be lawful for the board to lease the levy or any fee that may be imposed under sub-section (3) b public auction.

> (5) When any fee has been leased under sub-section (4), any person employed by the lessee to collect such fees or the lessee himself may, subject to the conditions of the lease, collect the fee or expel from the place for the use of which the fee is payable any person who is liable to pay the fee but refuses to pay it."

The afore-quoted provisions manifestly reveal that for the purpose of levying any fee the condition precedent to such levy is issuance of licence or permission by the Municipal Board. Obviously, the Board may charge fee when any licence is granted by the Board under the Act. But, this is not the case in the present matter. Therefore, the contention of the respondent that the Board is competent to charge the fee in question in pursuance of the impugned resolution passed in exercise of power conferred by Section 138 of the Act is without any basis. The provisions of Section 138 of the Act of 1959 are not attracted in the present case.

Similarly, upon consideration of Section 104 and 105, contained in Chapter VII relating to imposition of taxes, of the Act of 1959, it is clear that proviso (b) to Section 104 specifically excludes motor vehicles from the purview of imposition of any tax under clause (2) in respect of motor vehicles as defined in the Motor Vehicles Act, 1939 or any other mechanically propelled vehicle. Likewise, proviso (a), appended to Section 105, relating

to "Other taxes that may be imposed", categorically lays down that no tax under clause (i) or clause (iv) shall be leviable in respect of any motor vehicle as defined in the Motor Vehicles Act, 1939 or other mechanically propelled vehicle.

Besides the above legal position emerging upon consideration of the provisions of the Rajasthan Municipalities Act, 1959, Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951 lays down that it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle notwithstanding anything to the contrary in any law for the time being in force in any part of the State of Rajasthan.

In D.B. Civil Reference No.52 of 1961, decided on 21.02.1963 (1963 RLW 258), a Division Bench of this Court considered the question in the light of Section 60 of the Cantonment Act and Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951 and it was observed as under :

> "Sec.60 of the Act, authorises the imposition of taxes by the respondent, reads as follows :-
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> "60.General Power of Taxation.
> (1)The board may, with the previous sanction of the (Central Government), impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the (State) where in such cantonment is situated;
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> (2)Any tax imposed under this section shall take

effect from the date of its notification in the Official Gazette."

It is clear from the language of the section that a limitation has been imposed upon the respondent in the matter of imposing taxes and that limitation is that it can impose only such taxes which can be lawfully imposed in any municipality in the State wherein the statement is situated. The intention appears to be that the taxation in a cantonment area should be consistent with laws regulating the imposition of taxation by the Municipal Boards in the State where the cantonment is situated.

We may now refer to the relevant provisions of law in our State of which the cantonment area is a part, bearing on the point. Sec.21 of the Rajasthan Motor Vehicles Taxation Act, 1951 9Act No.XI of 1961) – hereinafter refered to as the Act of 1951) clearly provides that notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle. Sec.104 and 105 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as the Act of 1959) which authorises imposition of taxes by the Municipal Board, contain provisions prohibiting the imposition of octroi or terminal taxes on motor vehicles ....."

In Raghuwar Dayal Vs. Municipal Board, Bari, reported in 1960 RLW 442, the Division Bench of this Court held trip-tax illegal being in direct violation of the provisions of Section 21 of the Act of 1951.

From the fore-going discussion, it is obvious that the impugned resolution cannot be treated to be in consonance with law and the same is without the authority of law. The resolution

is not placed on record by the petitioner. However, respondent has produced the same vide Annex.-R/3/2. Consequently, the writ petition deserves to be allowed.

In the result, this writ petition is allowed. Impugned resolution, brought on record vide Annex.-R/3/2 dated 14.02.2006 is quashed and set aside. There shall however be no order as to costs.

(Gopal Krishan Vyas) J.